
OVERVIEW

Caseworkers must verify the citizenship or immigration status of all children entering foster care. Foreign-born children, particularly those who are undocumented residents, should be identified as early as possible to ensure appropriate services are provided.

Legal Authority

Tax Relief and Health Care Act (P.L. 109-432)

Amends SSA title IV-E to require a state plan to have procedures for verifying the citizenship or immigration status of a child in foster care.

The Immigration and Nationality Act at (8 USC 1101(a) (27) (J))

Addresses immigrants present in the U.S. who have been made a dependent of a juvenile court, have had a best interest determination to not return to their home country, and to whom the Secretary of Homeland Security has granted status.

In re B & J, Minors, 279 Mich App 12; 756 NW2d 234 (2008)

Affirmed it is a violation of a parent's due process rights for a caseworker to deliberately act with the purpose of virtually assuring the creation of a ground for termination of parental rights.

William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L.110-457)

Establishes protocols and provisions for the treatment of unaccompanied minors and services for victims of severe forms of trafficking. Michigan Department of Health and Human Services has published a [Human Trafficking of Children Protocol](#) that can be reviewed for more information.

Vienna Convention on Consular Relations and Optional Protocol on Disputes, 21 UST 77 (U.S. Treaty), ratified December 14, 1969. Article 36

When a foreign national is taken into protective custody, or placed with the department for care and supervision, caseworkers are required to notify the appropriate consular office within 48 hours.

Definitions

Asylee

An individual already in the U.S., from any country of origin, who is seeking admission based on a humanitarian claim for asylum.

Foreign national

A foreign-born individual who is residing in the U.S. regardless of immigration status.

Qualified Alien

See [FOM 902, Verifying Qualified Alien Status](#).

Refugee

An individual from any country admitted as a refugee under section 207 of the Immigration and Nationality Act, 8 USC 1152. To qualify as a refugee, one must have a well-founded fear of returning to their country due to persecution based on race, religion, nationality, or affiliation with a political or social group.

Unaccompanied children

Children who are apprehended by the U.S. Department of Homeland Security (USDHS) and transferred to the care and custody of the U.S. Office of Refugee Resettlement (ORR). ORR makes and implements placement decisions in the best interests of the child to ensure placement in the least restrictive setting possible while in federal custody.

Unaccompanied Refugee Minor (URM)

Refugee minors, identified by the U.S. Department of State, who are eligible for resettlement in the U.S. but do not have a parent or adult relative available/willing to commit to provide long-term care.

Note: There are other unaccompanied minors with additional specific immigration statuses that may be eligible for the URM program; see *URM Reclassification* in this item.

Undocumented resident

A foreign-born individual who is residing in the U.S. without permission or authorization from USDHS or the U.S. Department of State.

**INTERPRETER
SERVICES**

For information on the obligation and procedures to provide interpreter or translation services for children and families with limited English proficiency; see [SRM 402, Limited English Proficiency and Bilingual Interpreter Services](#).

**VERIFICATION OF
CITIZENSHIP OR
IMMIGRATION
STATUS**

During initial meetings with all parent(s), regardless of citizenship, the caseworker must obtain and record information regarding the child's background, including place of birth, in order to acquire the child's birth certificate for the case record.

For foreign-born children, the caseworker must ask the parent(s) to provide documentation to verify U.S. citizenship or immigration status of the child. **The request for this information must be conducted in a non-judgmental, non-discriminatory way.**

Detailed information on documentation requirements can be found in [FOM 902, Funding Determinations and Title IV-E Eligibility](#). Caseworkers must scan both sides of any verification document(s) and upload the verification to MiSACWIS.

Note: The caseworker must not use a parent's citizenship or immigration status to determine a child's status.

**NOTIFICATION TO
USDHS**

Parents who are undocumented residents are not to be reported to the United States Department of Homeland Security (USDHS), as it is a violation of their due process rights for the supervising agency to deliberately take action with the purpose of virtually assuring the creation of a ground for termination of parental rights.

Additionally, the supervising agency must not report children or identified relatives who are undocumented residents to USDHS.

**NOTIFICATION TO
CONSULATE**

When a foreign national is taken into protective custody or placed with the department for care and supervision, Article 36 of the

Vienna Convention on Consular Relations requires that the appropriate consulate receive notification within 48 hours. Caseworkers are required to complete and submit the DHS-914, Notice to Foreign Consul/Embassy, to the appropriate consulate. The U.S. Department of State Bureau of Consular Affairs maintains an [online directory](#) of contact information for foreign embassies and consulates.

When a child who is U.S. citizens is taken into protective custody and the child's parent(s) is/are detained by USDHS officials, caseworkers are not required to contact the consulate but may do so at the request of the parent(s).

Consulates' Assistance with Placement in Foreign Countries

Notifying a foreign consulate may facilitate the location of family members, as well as the identification of an agency or resources in the child's home country, which may be able to assist in finding permanent placement options.

If a potential placement in a foreign country is identified, the caseworker must communicate with the relevant consul to determine the social service agency in the area of the potential placement and request the agency provide a home study. Caseworkers must specify desired content when requesting a home study in a foreign country and may use the [DHS-197, Home Study Outline](#), as a guide.

NOTIFICATION TO FOSTER CARE PROGRAM OFFICE

Children in the child welfare system who are undocumented residents **may** be eligible for immigration and legalization services. If it is determined that a child is not a U.S. citizen or a lawful permanent resident, caseworkers must immediately contact the [Child Welfare Policy Mailbox](#) to determine whether a referral to an immigration clinic or an immigration attorney is appropriate.

**LONG-TERM
PLACEMENT
DECISIONS FOR
UNDOCUMENTED
CHILDREN**

The child's caseworker must consult with their supervisor, the child (if age appropriate), the child's guardian ad litem, and the child's assigned immigration attorney, to collectively decide whether it is in the child's best interests to return to their country of nationality or former residence. When making this determination, the following conditions must be considered and documented in the case service plan:

- Circumstances of the child.
 - Age.
 - Ability to protect self.
 - Medical needs.
 - Time spent in each country.
 - Language ability.
 - Cultural identity.
 - Familial and other significant relationships.
 - Eligibility for a legal immigrant status in the U.S.
- Circumstances of the child's parents, relatives, and if applicable, fictive kin.
 - Immigration statuses and options.
 - Living arrangements.
 - Relationship with child.
 - Interest in becoming the child's caregiver.
 - Criminal history.
 - Ability to meet any special needs of the child.
- Safety of placement possibilities abroad without the supervision typically provided by MDHHS.

**Return to Country
of Nationality or
Former Residence**

If it is determined that it is in the child's best interest to return to his or her country of nationality or former residence, the caseworker must make arrangements to obtain an appropriate home study for a

placement in the relevant country; see *Consulates' Assistance with Placement in Foreign Countries* in this item.

Remain in the United States

If it is determined that it is not in the child's best interest to return to their country of nationality or former residence, and it is determined by the child's assigned immigration attorney that the child is eligible for a legal immigration status, then the application process for legal immigration status will be initiated by the assigned immigration attorney.

Note: If the application process for a legal immigration status is initiated, the caseworker must assist the assigned immigration attorney in obtaining information required to apply for a legal immigration status.

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) allows undocumented children a legal presence. To be eligible, youth must be under the jurisdiction of a juvenile court due to abuse, neglect, or abandonment and cannot be reunified with a parent.

Youth who have been granted SIJS will have the opportunity to apply for an adjustment of status to that of a lawful permanent resident. Acquiring a lawful permanent resident status can benefit youth in many ways, including the receipt of the following rights:

- Remain in the U.S. without threat of deportation.
- Receive governmental benefits.
- Permanently work legally in the U.S.
- Qualify for in-state tuition when attending a state college.
- Have the opportunity to apply for U.S. citizenship.

See the Immigrant Legal Resource Center's [Special Immigrant Juvenile Status webpage](#) for more information.

MEDICAID

Medical assistance coverage for children who are not U.S. citizens or who do not meet the definition of a qualified alien is limited to emergency services only; see [FOM 803, Medicaid - Foster Care](#).

FUNDING

Receipt of title IV-E funds is limited to U.S. citizens and qualified aliens. If the caseworker determines that a child is not a U.S. citizen or a qualified alien at the time of removal, the child is not title IV-E eligible; see [FOM 902-05, Title IV-E Funding Denial or Cancellation](#).

SERVICES FOR NON-URM REFUGEE MINORS

Generally, refugee minors arrive in the U.S. as part of a family unit. Refugee minors who are part of a family unit and who subsequently enter foster care are **not** undocumented or unaccompanied, are **not** eligible for the Unaccompanied Refugee Minors (URM) program, and must **not** be coded as such in MiSACWIS. The supervising agency must serve refugee minors who are not in the URM program in the same manner as they would serve any other child in the general foster care population.

Note: In certain cases, a refugee minor may be eligible for reclassification as an URM. Upon reclassification, they would then be URM program-eligible; see *URM Reclassification* in this item.

URM RECLASSIFICATION

When a caseworker identifies a minor **with one of the verified humanitarian statuses identified below** who needs culturally appropriate foster care services, the caseworker must contact the Michigan Department of Labor and Economic Opportunity [Office of Global Michigan \(OGM\) mailbox](#) regarding a referral for reclassification. The OGM will review the request and if appropriate, initiate the request to the director of the U.S. Office of Refugee Resettlement (ORR) for reclassification.

ORR will reclassify a minor to unaccompanied status if the following conditions are met:

- The minor is eligible for ORR-funded benefits and services; that is, they must have one of the following humanitarian statuses:
 - Refugee.
 - Asylee.

- Cuban or Haitian entrant.
- An ORR-certified victim of a severe form of trafficking.

Note: See [FOM 902, Funding Determinations and Title IV-E Eligibility](#), for acceptable forms of verification.

- No parent of the minor has lived in the U.S. since the child's arrival here **or** the parental rights have been terminated or the parent is deceased.
- No relative or non-related adult has ever established legal custody of the child in the U.S.
- With respect to a child who entered the U.S. accompanied by a non-parental relative or non-related adult, or who entered the U.S. for the purpose of joining a non-parental relative or non-related adult, the child is not currently living in the home of such a relative or adult.
- An appropriate court has placed legal responsibility for the child with the department or local public child welfare agency or with a licensed non-public agency under contract with the state to provide services to unaccompanied minors.

Requests for reclassification are considered on a case-by-case basis. ORR will evaluate and process reclassification requests after receiving all pertinent information. In some cases, the director of the ORR may waive one or more conditions of eligibility.

Example: ORR has waived the second condition for refugee children whose parents died shortly after arrival in the U.S.

If the ORR approves the reclassification request, the determination is effective with the date of OGM's request. OGM is responsible for arranging the transfer of the minor's case to the receiving agency; see [FOM 722-17, Unaccompanied Refugee Minor \(URM\) Program](#).

POLICY CONTACT

Questions about this item may be directed to the [Child Welfare Policy Mailbox](#).